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CURRENT TOPICS

The Late Judge Procter

SIR WILLIAM PROCTER, whose lamented death at the age of 79 occurred on 26th June, began his legal career as a solicitor's clerk. Later he was given his articles and became a partner in the firm which had first given him employment. In 1905, at the age of 34, he was called to the Bar at Gray's Inn, and for twenty-three years he conducted a highly successful common law practice on the Northern Circuit. In 1928 he was appointed a county court judge of Circuit No. 19. In 1931, 1936 and 1941 he acted as Commissioner of Assize on the Northern Circuit. In 1941 he was knighted for his services since 1933 on the committee for drafting county court rules. To ambitious unadmitted clerks, and indeed to all lawyers, the late Sir William Procter's career is an inspiration and a reassurance that the prizes are there for all who have ability and determination.

A Town Clerk's Duties

A PLEA for the revision of the present " narrow conception " of the duties of a chief officer of a local authority is contained in a booklet by Mr. JAMES MACCOLL, M.P., dealing with management problems in local government. Referring to the qualities needed in chief administrators, he wrote : " Legal training does not always make for breadth of vision. Many local councils show both the virtues and defects of being run by competent lawyers. They discharge their obligations punctiliously. They make no mistakes. But the town remains a thing of bits and pieces. There is no one to pull it together. The elected members have ideas but they lack the time, experience and administrative skill to work them out. Too often the clerk who has all these qualities keeps ostentatiously aloof from what he regards as matters of politics beyond the scope of his duties." He recommended that in large authorities there should be a separate legal department and the clerk should be appointed for his administrative gifts while, in smaller authorities, one of the departmental heads could be designated chief administrative officer. We are indebted for the above quotation to the *Municipal Journal* of 8th June. We agree with it even less than we do with other generalisations. It is old fashioned, in a century which has produced a Lloyd George, a Sir Kingsley Wood, and a Sir Arthur fforde, to speak of the narrowness of English legal training. Before action is taken on generalisations, it is wise to receive and inquire into the detailed particulars, if any, on which they are based.

The Landlord and Tenant Act, 1927: " Nine Months " in s. 5 (2)

AN interesting question has lately been raised under s. 5 (2) of the Landlord and Tenant Act, 1927, concerning tenants with terms expiring by effluxion of time. If these require a new lease and have duly served their advance notice under s. 5 (1) they have, by s. 5 (2), to start their action not less than " nine months " before the tenancy ends. The question is : is " nine months " synonymous with " three quarters " ? Those raising the question appear to have forgotten that a

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decision—and, it is submitted, a correct decision—upon this very question was given in *Crutchley* v. *Ostacchini* in March, 1931, by the late Judge Horace Rowland, reported in Mr. L. G. H. HORTON-SMITH'S "Second Report" upon this Act, December, 1932, at p. 27. The plaintiff there was a restaurant keeper, holding his premises under a seven-years' lease due to expire on 24th June (Midsummer Day), 1931. He had served his advance notice under s. 5 (1), as also one for goodwill-compensation under s. 4 (1), and he started his action—making the like double claim, framed in the alternative—on 29th September (Michaelmas Quarter Day), 1930. At the hearing, the landlord's counsel submitted that the plaintiff must "elect" which of the two alternative remedies he would pursue; and, this being upheld by His Honour, the plaintiff at once elected for that under s. 5 (2), little realising the fatality involved in such choice, for the Act reckons by months, i.e., calendar months, and not by quarter days. The learned judge held accordingly that the action should have been commenced on 24th September, 1930, at the latest, and that the plaintiff, having commenced it only on 29th September, 1930, was thus five days too late and so out of time; and there being no power to extend any time fixed by the Act (*Donegal Tweed Co., Ltd.* v. *Stephenson* [1929] W.N. 214; 141 L.T. 262), he dismissed the action. Nor did the plaintiff appeal.

"The Prisoner's Friend" and Legal Representation

MR. HUGH J. KLARE, Secretary, Howard League for Penal Reform, wrote in *The Times* of 28th June that s. 52 (2) of the Criminal Justice Act, 1948, which provides that the rules for the regulation and management of prisons must include "provisions for ensuring that a person who is charged with any offence under the rules shall be given a proper opportunity of presenting his case," resulted from the insistence of Parliament on the need for a "prisoner's friend" during the hearing of serious charges. He said that the committee which drew up the recent report on punishment in prisons and Borstals recommended that prisoners charged with offences against prison discipline should not be allowed legal representation. He wrote that the committee found itself "forced to the conclusion that if representation is to be conceded only a lawyer would be able to give a prisoner the requisite assistance." He added: "One might have thought that, for instance, a prison welfare worker who understands the personality of the offender might be of great help to him during the hearing of his case." Mr. M. GORDON LIVERMAN, a London magistrate, wrote in support of this letter in *The Times* of 30th June: "Even in the courts held outside prison the most able and educated defendant who is not legally represented frequently finds himself quite unable to place his situation adequately before the court. Sometimes such a defendant receives much consideration from prosecuting counsel and is often patiently assisted by the presiding judge or chairman; but modern ideas do not consider it right that any person charged with a criminal offence should have to depend on fortuitous assistance of that kind. . . . It is earnestly hoped that . . . the State will show itself to be prepared to encounter an adequate defence before administering punishment to even an erring subject."

City Judges' Salaries

A FIRST step in the scaling up of judges' salaries is to the credit of the Court of Common Council, which, on the 28th June, approved recommendations to increase the salaries of the City judges. Except for the salary of the RECORDER, which is to stay at £4,000 a year, the salaries of the City judges are to be raised by £500 a year, so that the COMMON SERJEANT will receive £3,500 a year, the JUDGE OF THE MAYOR'S AND CITY OF LONDON COURT, £3,000 a year, and the ASSISTANT JUDGE, £2,500 a year. The Recorder's personal pension will be £2,800, plus a lump sum equal to one year's reduced pension and a widow's pension, in accordance with the Administration of Justice (Pensions) Act, 1950. The emoluments of the Recorder were last fixed in 1892, and those of the other judges in 1921, 1922 and 1937.

The Church and Betting Offices

THE ARCHBISHOP OF CANTERBURY has given his opinion at the Canterbury Diocesan Conference on 26th June that the proposal to set up and license cash betting offices should be tried. He said that the Royal Commission's report was a little inclined to soft-pedal the extent and evils of gambling: "It recognises that gambling is self-regarding and an essentially uncreative activity, but it does not feel able to do much about it." The present law about street betting, Dr. FISHER said, was unenforceable, and unfair as between rich and poor. Most reluctantly he felt that the change proposed was the only reasonable one, and that under the strictest controls it should be tried, on the ground that it was enforceable and removed an injustice.

The Law Association

THE report of the board of directors of the Law Association (for the benefit of widows and families of solicitors in the metropolis and vicinity) to the 134th Annual General Court, held on 13th June, 1951, states that the total strength of the association is now 1,024, of whom 207 are life members. The funded property of the association now totals £49,215 nominal, with annuity of £308. The receipts of the association for the year, compared with £3,365 13s. 7d. for the period 21st May, 1949, to 5th April, 1950, were £7,037 18s. 5d. The 1951 receipts include the balance of a bequest from the estate of the late Mrs. Ellen Ramsden, amounting to £3,663 14s. 5d. The sum of £75 10s. was contributed to the general fund in donations during the year and included gifts from the Worshipful Company of Solicitors of the City of London, the Worshipful Company of Girdlers, the Worshipful Company of Armourers and Brasiers, Croydon and District Law Society, Frank Butler Memorial Fund, Solicitors' Law Stationery Society, Limited, and other companies. The report states that the board is constantly faced with the need not only for more grants but for larger grants to enable their beneficiaries to meet ever increasing expenses, and it is clearly imperative that many more members shall be enrolled.

The Professional Classes Aid Council

BOTH The Law Society and the Solicitors' Benevolent Association are represented on the Professional Classes Aid Council, together with the representatives of about eighty other professional bodies and their benevolent societies. Their Annual Report for 1st April, 1950, to 31st March, 1951, is the thirtieth, and unfortunately it indicates a worsening of their financial position as against last year, a deficit of £1,094 being shown. The recent steep rise in the cost of living has been, among other factors, a potent cause of urgent distress, and although donations and subscriptions have been well maintained, the total expenditure for the year, £16,031, of which £12,317 was spent on relief, shows an increase for the latter purpose of £753. The amount spent on training was £1,614, including £275 administered grants, compared with £1,405 last year.

DEVELOPMENT PLANS—I

THE three-year period allowed by s. 5 of the Town and Country Planning Act, 1947, for the preparation and submission to the Minister of Town and Country Planning (now Local Government and Planning) of development plans expired on the 1st July, unless extended by the Minister in any particular case.

Up to the beginning of June very, very few plans had been submitted, and, though the flow increased during the month, it is known that very many authorities have applied for and obtained extensions of time, some a short extension only to cover approval by the authority of the plan at a meeting in July and any necessary time for printing the plan, others for a longer time (see p. 434, *post*). Many readers will before long have to be considering these plans and advising their clients upon them, and the object of this article is to draw attention to the composition and salient features of the plans and the points to be watched for in considering them.

The statutory provisions relating to the plans are to be found in Pt. II of the 1947 Act. The relevant regulations are the Town and Country Planning (Development Plans) Regulations, 1948 (S.I. 1948 No. 1767), and the relevant circulars of the Ministry of Town and Country Planning are Nos. 40, 59, 63, 92 and 97.

Section 5 of the 1947 Act requires local planning authorities, as a preliminary to their plan, to carry out a survey of their area and to submit to the Minister with the plan a report of the survey. The survey is intended to lay the foundation for the plan.

Both the report of the survey and the development plan will consist partly of written material and partly of maps. In the case of the report the written material is known as the written *analysis* and in the case of the development plan as the written *statement*.

There are two important distinctions between the report and the plan :—

(1) The plan is a statutory document in the sense that it has to be approved by the Minister and becomes operative under the Act ; the report is simply a document prepared by the authority for the information of the Minister and has no statutory effect.

(2) A certified copy of the plan has to be deposited for public inspection when the original is submitted to the Minister for approval (reg. 15) ; there is no such requirement in the case of the report.

The result of (1) is that the written statement which forms part of the plan are a very formal document (the contents of which are prescribed by reg. 13) containing little more than a summary of the main proposals of the plan with such descriptive matter as the authority consider necessary to illustrate the proposals in the plan, but not containing the facts on which the plan is based or arguments for or against the plan proposals.

The written analysis, forming part of the report of the survey, on the other hand, as the Ministry say in Circular No. 97, " whilst it must primarily be an assessment of the significant matters emerging from the survey of the area, offers plenty of scope for discussion of the problems to which the plan is intended to provide solutions and there is no reason why authorities should not extend the analysis to include not only explanation of the grounds for adopting the proposals, but examination of the practicability of carrying them out and of the effects they may be expected to produce."

It follows that any reader who may be consulted by clients with any major problem on the development plan proposals would be well advised to ask the authority for a copy of the written analysis and for permission to inspect the survey maps. He will then be in a much better position to advise.

While the analysis is not, as has been seen, a public document many authorities will probably make it publicly available ; indeed the Minister in circular 97 encourages authorities to give the public every opportunity of appreciating the basis for the proposals put forward in the plan.

Readers who are interested in knowing what the report of the survey will contain should consult circulars 40, 63 and 97.

So much for the report of the survey.

The development plan itself has, as mentioned above, to be placed on public deposit. Most authorities, however, will probably be willing to place copies of the written matter, and some possibly of the maps also, on sale, at or shortly after the time at which the certified copy is deposited.

But how is the reader to know when the original plan is submitted to the Minister and the certified copy deposited ? By reg. 10, the authority have to give public notice of the submission in the *London Gazette* and in each of two successive weeks in at least one local newspaper circulating in the locality in which the land to which the development plan relates is situated. There is no provision for notice to individual owners or whereby such owners can register for service of a notice. Apart, however, from the official notice, there will no doubt be publicity in the professional press* and considerable discussion in the local press, which will help to avoid any submission being missed.

The official notice is important because it will state the last date for sending any objection or representation to the Ministry with reference to the plan, which date must be not less than six weeks from the date of the first local advertisement. There is no specific provision for an extension of time, but a local inquiry will probably be held into most, if not all, development plans, and the Minister may possibly take into consideration late objections or representations.

Any objection or representation must be in writing and should state the grounds upon which it is made.

Although one cannot register for receipt of notice of the submission of a plan to the Minister, any person submitting an objection or representation may register his name with the local planning authority for receipt of notice of the eventual approval of the plan.

For the purpose of the regulations, " development plan," in relation to any area, means the maps and written statement required in relation to that area by Pt. II of the regulations, to which the reader is referred for full details. The plan will vary according to the type of planning authority by whom it is prepared. Planning authorities are of two types, namely, county councils and county borough councils.

The plan to be prepared by a county council for an administrative county will consist of—

(1) a county map ;
(2) town maps for such areas in the county as the county council or the Minister may determine ;
(3) comprehensive development area maps, if appropriate ;
(4) designation maps, as required ;
(5) street authorisation maps, if appropriate ;

* The submission of development plans is noted in the news columns of THE SOLICITORS' JOURNAL

(6) a county programme map;
(7) town programme maps;
(8) the written statement, which may comprise one document, or, more conveniently, may be divided up so that one part describes the county map and other parts the town maps.

The county map

The county map covers the whole of an administrative county, but, as it has to be on a scale of only one inch to a mile, the reader will appreciate that it will show little detail, and much of what it does show will be diagrammatic only. The details of what it has to and may contain will be found in Pt. II of the First Schedule to the Regulations, but the points of most interest to the reader are noted here.

First, the map will show, by grey edging and the letters TM, certain areas for which town maps are submitted with the county map and by a 1½-inch diameter broken circle symbol with the letters "TMC" areas for which town maps will be submitted later. If the property with which the reader is concerned is in one of these areas, the county map will be of little interest to him and he should turn to or await submission of the town map. These areas will probably be found to cover the larger towns in the county, though the number which will be submitted initially with the county map will be small and almost certainly confined to the principal towns.

Then the county map will show, by ½-inch diameter circular symbols, the location of "settlements intended as centres for social, educational or health services" other than the town map areas. These will probably be found to be the small towns and large villages. No zoning proposals will be shown for these settlements but it is probably safe to conclude that the planning authority will be freer in allowing new housing or other development in and around these settlements than they will elsewhere.

The map will show existing and proposed trunk and principal traffic roads. The proposals on such a small scale will be diagrammatic only and a paragraph may be found in the written statement to this effect. If, therefore, a proposed road line is found to cut through a client's house it does not mean that in fact it will do so. Therefore, objections and representations in respect of particular properties are unlikely as a general rule to be sustainable, and only objections and representations envisaging a major change of route as a matter of policy are likely to be worth making.

There may be found dotted about some small inverted triangles. These are symbols indicating that a designation map has been submitted in respect of the land to which they refer, and, if a client's land appears to be concerned, the reader should inspect the appropriate designation map.

Also on the map will be areas shown by different varieties of edging or hatching. These will be found to be areas for mineral working, deposit of refuse or waste, large acreages for government or service departments or local authority purposes, areas of great landscape, scientific or historic value, areas for large-scale holiday camping, and other particulars or proposals of importance.

If it is found that a client's land is situate in any of these areas, the position must be carefully considered. Very broadly, these areas may be divided into two, namely:—

(1) Those where, if the area is to be used as proposed, it will mean one's client being unable to enjoy his property as he has done hitherto, e.g., agricultural land shown for mineral working or an airfield.

(2) Those where existing enjoyment of property is unlikely to be interfered with but there will be restriction on future development as, e.g., where the area is shown as green belt or of great landscape value.

In the case of the first class of area it will be desirable to lodge an objection unless the client is prepared to allow his property to be used for the purpose in view. Particular care should be taken where land is shown for mineral working with the letters SM, UM or SM/C, for in these cases the right to work the mines or minerals may be conferred on persons other than the owner by virtue of the Mines (Working Facilities and Support) Act, 1923, and the Town and Country Planning (Modification of Mines Act) Regulations, 1948 (S.I. 1948 No. 1522) or, in the case of the last-mentioned letters, the land may be taken for the surface working of coal or for the surface purposes of collieries.

In the case of areas of the second type reference should be made to the written statement to ascertain what restrictions on development are contemplated in these areas. In the case of areas of great landscape value some comment as to this is to be found in circular 92, which states, among other things: "The broad intention will normally be that a major consideration will be the effect of any proposed development on the landscape, but it is highly desirable that this should be expanded wherever possible to indicate how far the policy is likely to result in refusal of permission for specific sorts of development or in insistence on special attention to design and external appearance." In a country where building is mainly in stone there might thus be a prohibition against development in brick.

In many of these cases landowners may welcome these proposals as they will, of course, help to preserve their amenities, particularly, for example, in the case of a green belt round a town. In considering the question of an objection, however, one must consider, first, the propriety of applying special treatment to the area at all, and, secondly, the particular restrictions involved.

Much of what is shown in the county map will be existing already, e.g., roads, railways and airfields, as it shows existing as well as proposed projects.

To summarise, the most important features of the county map will be areas for which reference should be made to a town map, circles large and small showing respectively towns for which town maps will be prepared and other settlements intended as centres for social, educational or health services, and triangles for designated land, major road proposals, and areas of land allocated for special purposes or in which development will be restricted, but the rest of the map will be blank. From this it will be realised that for the large majority of landowners the county map is not a very important document.

In the second part of this article the other maps comprising the plan will be considered.

R. N. D. H.

Mr. P. J. E. NICHOLS, solicitor, of Odiham, Hants, has been appointed clerk to the trustees of the Odiham Consolidated Charities in succession to Mr. James Lane Brooks, who at the age of 90 has retired from the position which he had held for fifty-five years.

Mr. W. K. CARTER, K.C., has been appointed Deputy Chairman of the Court of Quarter Sessions for the County of Derby.

Mr. G. De P. VEALE, K.C., has been appointed Recorder of the Borough of Sunderland.

Lt.-Col. E. T. L. BAKER, O.B.E., T.D., solicitor, of Rochester, has been awarded three clasps to the Territorial Efficiency Decoration. Eighteen months ago he was awarded the Greek Distinguished Service Medal for his work with the Civil Affairs Division in Greece.

Costs

LANDS TRIBUNAL AND KINDRED COSTS—V

In our last article we dealt with the costs arising in connection with a reference to the Lands Tribunal. Details of the costs to which a solicitor acting for the claimant is entitled were given, and in order to determine the amount of costs likely to arise in any particular case, it would be necessary to estimate them on the basis of the details provided, for the total amount thereof would depend entirely on the circumstances of the case, the amount of the claim, the complexity of the points in issue, the documents involved, and whether or not counsel are engaged. Further, it will be recalled that the tribunal has absolute discretion to award costs on whatever scale it considers just, and, indeed, may even award a lump sum by way of costs. It would be fair to say that if the costs were awarded by the tribunal on the High Court scale, then the costs of the claimant in a reference to the tribunal, where counsel is engaged to appear, would not be a great deal different from the costs of a plaintiff in a High Court action. They might be somewhat less by reason of the fact that the notice of reference would probably not be settled by counsel, but this fact would not make a very serious difference to the amount of costs where counsel is briefed to appear at the hearing.

As we observed in a former article, the decision of the tribunal is final and conclusive on a question of fact or quantum, but there is a right of appeal to the Court of Appeal on a case stated on a question of law (see s. 3 (4) of the Lands Tribunal Act, 1949).

The section provides that any party aggrieved by the decision of the Lands Tribunal as being erroneous in point of law may, within such time as may be limited by rules of court, require the tribunal to state and sign a case for the decision of the court. The phrase "within such time as may be limited by rules of court" is defined by R.S.C., Ord. 58B, which states that "any person who is aggrieved by a decision of the Lands Tribunal as being erroneous in point of law may, within six weeks of the date of the decision, by notice in writing addressed to the registrar of the Lands Tribunal, require the tribunal to state a case setting forth the facts on which the decision was based and the decision of the tribunal thereon."

Within six weeks of the date of the decision, then, the appellant must send to the registrar of the Lands Tribunal a notice requiring the tribunal to state and sign a case for the decision of the Court of Appeal. No particular form is provided, and a simple notice that the appellant is aggrieved by the decision of the tribunal and requires a case to be stated appears to be sufficient. A fee of 13s. 4d. would normally be allowed as "Instructions to Appeal," and a further fee of 5s. would be proper for drawing and copying the notice of appeal and serving it on the registrar of the Lands Tribunal.

The tribunal will then state and sign a case and will send it by registered post to the person aggrieved, and a fee of 6s. 8d. would be allowed for perusing the case stated by the tribunal, or, if it exceeded twenty folios in length, a fee of 4d. per folio.

Within twenty-one days after receiving the case the party aggrieved will lodge the signed case with the Court of Appeal together with a notice of motion stating the grounds upon which it is alleged that the tribunal is wrong in point of law. A fee of 3s. will be allowed for drawing the notice of motion, unless it exceeds three folios in length, in which case a fee of 1s. per folio will be allowed. Normally a fee to counsel of from three to five guineas will be allowed for settling the notice of motion. A fee of 6s. 8d. is allowed for attending to lodge the stated case with the court and to enter the appeal.

The appellant will be allowed to charge for a fair copy of the stated case to keep on filing the original with the court. He will also be allowed to charge for a copy of the notice of motion to serve on the registrar of the tribunal. A fee of 2s. 6d. may be charged for the service. At least twenty-one days prior to the date named in the notice for making the motion a copy of the notice, together with a copy of the case, will be served upon every party to the proceedings. A fee of 4d. will be allowed for the copying and 2s. 6d. for service on each party served.

Three copies of the notice of motion, the stated case, and the material documents will have to be made, at a cost of 4d. per folio for each copy, and lodged with the court for the hearing. A fee of 13s. 4d. would be chargeable for attending to lodge with the court the copies of the material documents.

Nothing else would be required to be done by the appellant's solicitor except to draw the brief to counsel to attend the hearing before the Court of Appeal. Nothing would normally be allowed as instructions for brief, except in the unlikely event of witnesses being called, since a fee to cover this item would have been allowed on the hearing before the tribunal, either as Instructions for Brief proper, in a case where counsel had been instructed to appear on behalf of the party before the tribunal, or, in a case where the solicitor had conducted the reference before the tribunal without the assistance of counsel, as Instructions to Conduct the Reference.

The normal fee of 1s. 4d. per folio will be allowed for drawing and copying the brief to counsel, and 4d. per folio will also be allowed for copying the notice of appeal and stated case. If counsel was engaged on the hearing before the tribunal there will be no need to make him a copy of the material documents, since these will already have been made to accompany the original brief. If, however, counsel did not attend the hearing before the tribunal, then a copy of the material documents may be made for counsel, and the normal fee of 4d. per folio would be chargeable. A conference with counsel will be allowed with the brief.

A fee of 13s. 4d. is allowed for searching the list during the sittings, and for the attendance at the hearing of the appeal by the Court of Appeal the solicitor will be allowed a fee of three guineas a day. If, as is not unusual, the judgment of the Court of Appeal is reserved, then a fee of 6s. 8d. will be allowed to the solicitor for instructions to counsel to attend to hear the judgment. Not more than five guineas is normally allowed to counsel for such attendance, whilst the solicitor's fee for attending to hear the judgment would be from one to three guineas according to the time occupied.

A fee of 6s. 8d. would be allowed for attending to obtain the order of the Court of Appeal, and a copy would be made, at a charge of 4d. per folio, for service on the other party or parties. The fee for service of the copy order is 2s. 6d.

It will be seen that an appeal to the Court of Appeal on a case stated by the Lands Tribunal follows similar lines to an appeal from a judgment of the lower court, and the costs involved also will be much the same.

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The other tribunal to which we referred in our previous articles is the tribunal set up under the Landlord and Tenant Act, 1927, to deal with questions of compensation on the termination of business tenancies. The constitution of this tribunal and the procedure are quite different from the Lands Tribunal. The tribunal under the Landlord and Tenant Act, 1927, is with certain exceptions the county court for the

district in which the land is situated, and the rules of procedure are contained in Order 40 of the County Court Rules, 1936, as subsequently amended. The tribunal itself does not normally investigate the facts, nor determine the amount of the compensation; in the first instance the matter is referred to a referee, unless the parties otherwise agree between themselves.

It will be recalled that s. 21 of the Act makes subss. (1), (2) and (3) of s. 5 of the Acquisition of Land (Assessment of Compensation) Act, 1919, applicable to these references. Since the county court is the appropriate tribunal then, in awarding costs in accordance with the directions contained in s. 5, *supra*, the county court judge would determine the scale upon which the costs are to be compiled, and would order that they be taxed by the registrar.

The principal difficulty that one would encounter in making up a bill of costs, if those costs are awarded under one of the county court scales, would be to fit the procedure of a reference under the Landlord and Tenant Act, 1927, into the framework of the scales. It will be recalled that the county court scales of costs were completely remodelled by the County Court (Amendment) Rules, 1950, and the number of items was considerably reduced. This was achieved by introducing omnibus items to cover what was formerly the subject of individual fees. Item 6 of Scales 2 and 3 is an example, since this fee for "preparing for trial of action or matter" is intended to cover such items as interviewing witnesses, taking proofs of their evidence, preparing and serving notices to produce and admit documents, perusing correspondence and notices to produce and admit, and generally getting the case ready for hearing.

However, the difficulty of fitting the procedure in connection with any particular matter within the framework of the county court scales is not insuperable, and in our next article we will endeavour to give details of the costs allowable in a reference under the Landlord and Tenant Act, 1927, where costs have been ordered to be taxed on a county court scale.

J. L. R. R.

A Conveyancer's Diary

SOLICITOR-TRUSTEES OF CHARITABLE INSTITUTIONS —RIGHTS OF CHARGING

THE decision in *Re The French Protestant Hospital*, reported at p. 285, *ante*, and more fully at [1951] 1 Ch. 567, is of considerable importance to solicitors (and there are many such) who act as trustees of various charitable institutions. It is also remarkable in this respect, that the only guidance which could be found to the problem which there arose was extracted from a House of Lords decision more usually cited as a leading authority on a point connected with the law of libel—a source which cannot often have been resorted to before for assistance on a question relating to the rights and duties of trustees.

The French Protestant Hospital was incorporated by Royal Charter in 1718 by the name of "The Governor and Directors of the Hospital for poor French Protestants and their descendants residing in Great Britain." The charter provided that there should be a governor, a deputy governor, and a number of directors—a term the use of which in this context appears to have been purely accidental; as was pointed out by the learned judge, the more common description of persons in their position would have been "governors" or the like. Among the powers conferred on the governor, deputy governor and directors was a power to make "such and so many good and wholesome byelaws" as they should think beneficial for the hospital, and a power to alter the said byelaws as to them should seem expedient, provided that the said byelaws should be "reasonable and not repugnant to law."

One of the byelaws (No. XI) provided that no person should be eligible to be chosen or to continue a director who should receive any emolument from the corporation; and the byelaw which provided for the alteration of the byelaws provided that none of the byelaws should be altered, or any new byelaw made, except by a certain special procedure. Acting under this provision the governing body of the hospital purported to make an alteration to byelaw XI by the addition thereto of a proviso to the effect that byelaw XI should not "prevent any director holding or continuing to hold office by reason of the fact that the corporation employs in a professional capacity and pays fees to a firm of which such director is a member either as sole proprietor or a partner or otherwise." This alteration was prompted by the fact that for a number of years two men, who acted respectively as honorary solicitor and as surveyor to the corporation, were directors of the hospital, although they received fees for advice and work which they did for the hospital. The validity of this alteration was challenged by one of the directors and by the Charity Commissioners, and as a result this application was made to ascertain whether the alteration to byelaw XI was within the terms of the charter, that is to say, whether it was "reasonable and not repugnant to law."

The clue to this problem was found in certain observations made by members of the House of Lords, particularly Lord Herschell, in *Bray* v. *Ford* [1896] A.C. 44. In that case, B was a governor of the Y College, and F was the vice-chairman and had also acted as a solicitor. B wrote a letter to F, which he circulated also to other members of the governing body of the college, in which he said that F, whilst holding the fiduciary position of vice-chairman, had illegally and improperly made a profit as the college's paid solicitor. The college had been incorporated as a limited company on non-profit-making lines, and one clause of its memorandum of association contained the common-form provision for such an association that the income and property of the association should be applied towards the promotion of its objects and should not be distributed by way of profit "provided that nothing herein shall prevent the payment in good faith of remuneration to any officers or servants of the association, or to any members of the association . . . in return for any services actually rendered to the association, or by way of reimbursement of payments made, or costs . . . incurred in or about the business of the association . . ."

F brought an action for libel against B on the letter written by B, and at the trial the jury were directed that the clause of the association's memorandum referred to above entitled F, despite his position as vice-chairman, to receive remuneration for his services as solicitor to the college, and on this direction returned a verdict for F and awarded substantial damages. On appeal by B on the ground of misdirection and excessive damages, the Court of Appeal held that the jury had been misdirected as to the effect of the clause in question, which in

the view of that court did not entitle F, while he was vice-chairman, to receive remuneration for his services, but being of opinion that no substantial miscarriage had been occasioned by such misdirection, the Court of Appeal refused to disturb the jury's verdict on the amount of the damages. This decision was reversed by the House of Lords on the ground that, since the assessment of damages was the peculiar province of the jury in an action for libel, and since the jury had not had B's real case submitted to them and might, in assessing the damages, have been influenced by the misdirection, there had been a substantial miscarriage within R.S.C., Ord. 39, r. 6. A new trial was therefore ordered.

The view of the Court of Appeal of the effect of the clause in the association's memorandum, which the jury had been directed to consider as justifying the receipt of remuneration by F, was unanimously approved by all the members of the House of Lords who took part in this appeal. Most of the learned lords expressed their concurrence with that view in a few words, but Lord Herschell examined the position of a trustee in circumstances such as had arisen in the case somewhat more deeply, and, in a passage on which great reliance was placed in the present case, he said: "It is an inflexible rule of a court of equity that a person in a fiduciary position, such as the respondent's, is not, unless otherwise expressly provided, entitled to make a profit; he is not allowed to put himself in a position where his interest and duty conflict. It does not appear to me that this rule is, as has been said, founded upon principles of morality. I regard it rather as based on the consideration that, human nature being what it is, there is danger, in such circumstances, of the person holding a fiduciary position being swayed by interest rather than by duty, and thus prejudicing those whom he was bound to protect. It has, therefore, been deemed expedient to lay down this positive rule. But I am satisfied that it might be departed from in many cases . . . Indeed, it is obvious that it might sometimes be to the advantage of the beneficiaries that their trustee should act for them professionally rather than a stranger, even though the trustee were paid for his services."

In the present case Danckwerts, J., applying this general principle, held that the amendment of byelaw XI in the manner desired was not reasonable, and was repugnant to law, within the meaning of the byelaw which empowered the governing body to alter the byelaws: the observations of Lord Herschell showed that in certain circumstances, indeed, it was not improper to have a provision allowing trustees to charge for their services, and such clauses were often inserted in wills and settlements by settlors; but it was a very different matter for persons who were already in the position of trustees (as the members of the governing body were in this case), and therefore bound to exercise any powers they had in a fiduciary manner on behalf of the trusts for which they acted, themselves to empower members of that body to make a profit.

The amendment which it was sought to have approved in this case was very wide in its terms, and if it had not been disapproved by the court would have enabled the members of the governing body who performed professional services for the hospital to charge full profit costs and fees (although that was not the intention of the persons concerned, who had accepted remuneration on a much diminished scale for the services which they had rendered in the past and were willing to give assurances that they would continue to do so in the future). But this was not, apparently, a circumstance which weighed at all with the court, and the question before it was decided purely on principle.

This decision, and that in *Bray* v. *Ford*, show that it is not competent for a body of persons in a fiduciary position to confer powers enabling any of their number to charge for professional services rendered to the association or trust which they govern or manage, whatever the proposed scale of charges may be. In these two cases the trustees were members of a corporation, in the one case a limited company and in the other a chartered corporation, but the principle of these decisions is one that applies equally to trustees of an unincorporated institution holding property on the terms of a trust deed. Solicitors who act for corporations or bodies of any of these kinds in a professional capacity, and find the services they render too onerous to give completely freely, should not, therefore, accept membership of the body of governors or trustees unless the trust or institution is one that, at the date of the appointment of the solicitor concerned, contains among its rules or byelaws a provision authorising a professional member of the governing body to charge for his services in his professional capacity. Provisions of this kind are likely to be rare, even in those cases, such as associations for providing housing for those in special need, which were founded at a time when what is commonly known as the professional charging clause had become a not unusual feature of a private trust.

"A B C"

Landlord and Tenant Notebook

LEASEHOLD PROPERTY (TEMPORARY PROVISIONS) ACT, 1951—I

SHOPS

THE Leasehold Property (Temporary Provisions) Act, 1951, which commenced to run on 24th June, provides for "continued" or "new" tenancies of two kinds of property: dwellings and shops. Dwellings are the subject of Pt. I, shops that of Pt. II; but as the rights conferred by Pt. I come into being without any legal proceedings being necessary, while no new tenancies of shops are created unless an application be made and granted, I propose to write about the latter first. It is, indeed, possible that more people will be affected by Pt. II than by Pt. I.

The tenant of a shop (I will deal with the niceties of the definition later) whose term expired at Midsummer, 1951, or which expires between then and Midsummer, 1953, and who desires a new tenancy under the Act must apply to the local county court within a given period. The requirements as to time for application can be stated as follows: if the tenancy expired or expires before 24th July, 1951, the application must be made by that date. If it is to expire as the result of a notice to quit or notice to determine (in the case of a landlord's option to break) taking effect later, the application must be made within a month after the landlord's notice is given. If the tenancy is one for a fixed term, and the landlord, four months or less before the date of expiry, serves the tenant with a "notice to elect," the tenant must make his application within a month of receiving that notice or not at all. If no notice to elect is served, the tenant may make an application at any time up to one month *before* the term is to expire. A notice

to elect must contain particulars to be prescribed by Statutory Instrument; no copies of any such instrument had reached H.M. Stationery Office in Kingsway at 2.30 p.m. on 2nd July. The immediate effect of an application is that, if nothing happens within a month, the existing tenancy will be treated as continuing till one month after the final determination of the application or after withdrawal thereof. It may be mentioned here that there is a right of appeal *with leave*, and on granting leave the county court may direct that the tenancy shall have effect subject to modifications, etc.

In considering the application, the now familar guide of reasonableness is to govern the court's decision. It is to grant a tenancy of up to *one year* if it appears reasonable to do so, and the rent and terms and conditions are to be what are in all the circumstances reasonable. But personal circumstances are to be ignored and there is a list of sets of circumstances in which a new tenancy is not to be granted. The first is, if the court is satisfied that the tenant has broken any of the terms, etc., of the expiring tenancy *and* that in view of the nature and circumstances of the breach a new tenancy ought not to be granted. Then comes an offer by the landlord, on reasonable terms, of alternative accommmodation suitable for the tenant's business, and next the fact that the landlord reasonably requires possession in order that the premises or a substantial part thereof may be demolished or reconstructed. The fourth objection is that there subsists in the premises an interest belonging to a public authority and that in the public interest a new tenancy ought not to be granted. "Interest belonging to a public authority" means one belonging to a Government department or held on behalf of His Majesty by a local authority as defined by the Town and Country Planning Act (the definition is in s. 119, and includes drainage boards), by statutory undertakers as defined in that Act (railways, electricity, gas, etc.) or by a New Towns Act, 1946, development corporation. The last ground on which a court is to refuse an application is that greater hardship would be caused by granting a new tenancy than by refusing one. It is apparent that not only the Agricultural Holdings Act, 1948, but also Pt. I of the Landlord and Tenant Act, 1927, and the Rent Acts have been resorted to for inspiration.

The granting of an application makes the parties landlord and tenant as if they had negotiated an agreement.

The above gives the general scheme of the Act and the provisions discussed are those most likely to concern practitioners in the near future. Something must be said, however, about some of the other provisions: the definition of a shop; the special provisions applicable in the case of certain "combined properties" and in that of mesne landlords; provisions for avoiding conflict when the Landlord and Tenant Act, 1927, Pt. I, operates; and service of notices.

A shop means premises occupied *wholly* for business purposes and so occupied *wholly or mainly* for the purposes of a retail trade or business; which latter means what the Shops Act, 1950, calls a retail trade or business except that it does not include the sale of intoxicants or of meals or refreshments on "licensed" premises unless the excise licence is a reduced-duty one under s. 45 of the Finance (1909-10) Act, 1910 (hotels and restaurants), or such licence could, it is certified by the Commissioners of Customs and Excise, have been granted if applied for.

The new Act recognises three types of "shop property": premises which consist of a shop *simpliciter*; those which consist of a shop and of living accommodation occupied wholly or mainly by the tenant or by a person employed by him for the purposes of the business of the shop; and property which *includes* a separate part consisting of a shop, or of a shop and such living accommodation. In either of the first two cases, the new tenancy to be applied for is to be a tenancy of the whole property. In the other case the landlord has a right to require that the whole property shall be let under the new tenancy, failing which it shall be a tenancy of the separate part as mentioned above. Where the premises include *two* separate parts, one a shop and the other such living accommodation, and the landlord does not require the whole property to be let under the new tenancy, that tenancy shall be a tenancy of *both* such separate parts *on application being made and unless the court in its discretion determines otherwise.*

Mesne landlords: it is specially provided that when it is proposed to grant a new tenancy which would extend beyond the term of a mesne tenancy, the court may order the grant of a reversionary tenancy so as to meet the circumstances. What does not appear to have been dealt with is a case in which such a mesne tenancy comes to an end before the hearing of the application.

As to the Landlord and Tenant Act, 1927, if the tenant has made a claim under Pt. I either for compensation for improvements or for compensation for loss of goodwill, and the landlord has served notice of willingness to grant a renewal on reasonable terms (ss. 2 (1) (*d*) and 4 (1), proviso (*b*), respectively), no application for a new tenancy can be entertained. If the two months in which the landlord may serve his notice have not expired, an application cannot be heard until the period does expire, and if the landlord should answer the Act of 1927 claim by a notice of willingness in the meantime, the application under the new Act is to be dismissed. And, even if no compensation has been claimed but the time for claiming it has not expired, the application is not to be heard till time for claiming expires, and if the tenant does make a claim the landlord can then stop the application by serving notice of willingness under the Act of 1927.

On the one hand, the artificial continuation of tenure is not to affect the time at which a tenancy terminates for the purposes of the Act of 1927; on the other hand, the time spent carrying on the business under a "new" tenancy counts towards the minimum five years for qualifying for compensation for goodwill (cf. *Lawrence* v. *Sinclair* [1949] 2 K.B. 77 (C.A.) and the "Notebook" at 95 SOL. J. 363).

Lastly, the registered post, etc., provisions of the Landlord and Tenant Act, 1927, s. 23, will apply for service of notice purposes.

R. B.

HULL INCORPORATED LAW SOCIETY
NEW PREMISES

On the 11th June, 1951, The Lord Mayor of Kingston upon Hull, at the request of the President (Mr. N. W. Slack) of the HULL INCORPORATED LAW SOCIETY and in the presence of the Sheriff of Kingston upon Hull (Councillor L. Rosen, LL.M.), who is a member of the Society, and a large number of other members, officially declared open the new hall and premises of the Society, which are situate in Bowlalley Lane, Hull. In so doing, the Lord Mayor congratulated the Society on having provided for its members accommodation worthy of the profession and the third port in the country. Prior to this, a photograph of the late James Willis Mills, solicitor, of Beverley, who, by a munificent bequest to the Society for the purpose, had been largely instrumental in enabling the premises to be acquired and adapted, was unveiled by his step-son, Mr. D. G. Jackson, also of Beverley, and one of the Society's members. Another member of the Society, Mr. S. B. Andrew, of Hull, had composed a clever ode to mark the occasion, copies of which were distributed. At the conclusion of the formal ceremony those present drank cocktails at the invitation of the President.

HERE AND THERE

BACK TO THE HOUSE

JUST because within living memory and for a little while before some settled public habit may have run along fairly smoothly we tend to forget that the world is normally an unpredictable sort of a place for living in and to take every jolt out of the ordinary as some sort of violation of the course of nature. So the long exile of the Lords and Commons from their respective Chambers seemed to some yet another crack in the crumbling fabric of an immemorial national tradition. Of course, it was nothing of the sort, for when the war interrupted its settled arrangements the Legislature had not been sitting there for so much as one paltry century, and last time it had to suspend its accustomed habits it was full thirteen years before it settled down again. That was when the Houses of Parliament went up in flames on 16th October, 1834, and, what with one thing and another, including a committee presided over by Prince Albert to consider the "promotion of the Fine Arts in this country in connection with the rebuilding," it was 1847 before Lords and Commons had new homes to call their own. Well, this time (starting, it is true, with less to be replaced) all's been made good in ten years, 1941–1951. The Commons settled in last year. The Lords and, up to a point, the Law Lords, are back where they belong. On 20th June for the first time since 1941 a batch of appeal case decisions was delivered in the old Chamber, reconstituted, refurbished, redecorated and discreetly modernised. To counsel and solicitors who remember the old arrangements, when they used to be compressed into a space like a rather small sheep pen, the first impression on passing through the golden gates is one of unexpected latitude and elbow room, for the Bar of the House has been pushed forward about fifteen feet into the Chamber. The acoustics used to be rather poor and this has been decisively remedied by unobtrusively suspending a dozen small microphones from the centre of the ceiling at something above head level. The result is both effective and surprising; the speaker you see in front of you and his voice comes booming at you from the wall.

THE APPELLATE COMMITTEE

WITH the Chamber restored, the final decision about the future of the Appellate Committee can scarcely be much longer delayed. The Law Lords, you remember, were constituted into a committee for the purpose of hearing the argument of appeals no more than a couple of years ago. The immediate reason was the pile-driving operations for the new boiler house going on just beneath the windows of the temporary Chamber. After that came the repairs to the Royal Gallery just outside. So far there's never been any suggestion that the committee was more than a temporary device, but a feeling has grown up that it might become permanent by prescription. The convenience of not having to interrupt the hearing of appeals to clear the Chamber for the ordinary work of the House is palpable and obvious. On the other hand, it is a serious innovation to cut the Law Lords off from legislative business and the Lord Chancellor from judicial business—since, if the two are running simultaneously, they can't be in both places at once. Meanwhile the committee sits on. Maybe they are going to wait till the summer recess to think things over. One pointer (but what it points to nobody can say) is that when *British Movietonews, Ltd.* v. *London & District Cinemas, Ltd.* (the case, you remember, in which the Court of Appeal was thought to have knocked the bottom out of the law of contract) came up for argument, Lord Simon presided. Now, he has been the strongest opponent of this dividing of the functions of the House and hitherto has steadily refrained from participating in the work of the committee. That makes a two years' absence and much has been lost by it. His performance is astonishing. At seventy-eight his personality, his style, the combined force and scintillation of his mind, still dominate and direct the whole proceedings.

UNCONVENTIONAL ARCHIVE

DURING the past two weeks the Historical Manuscripts Commission has been holding an interesting exhibition of notable documents (many of them exceedingly decorative) in the Old Hall in Lincoln's Inn—monastic deeds, a Bristol merchant's ledger of the early sixteenth century, Tudor road books, Privy Council proceedings against recusants, the articles for a truce signed by Hugh O'Neil with the Earl of Essex in 1599, when the English parleyed standing on the bank of the River Lagan and the Irish on horseback in the stream. The oddest of all as a document and one of the most interesting as a record is the Westminster Tobacco Box lent by the Past Overseers Society of St. Margaret and St. John, Westminster. In 1713 the Society used to meet at the Swan Tavern in Bridge Street and in 1713 Henry Monck, one of the members, presented to his fellows a small oval tobacco box bought for 4d. at the Horn Fair. In 1720 the lid was ringed with a silver rim recording the name of the donor and every now and then a fresh embellishment was added—for example, in a burst of Hanoverian loyalty in 1746, a likeness of the Duke of Cumberland engraved by Hogarth was fitted inside the lid. The fireworks in St. James's Park for the Peace of Aix-la-Chapelle in 1749 or a portrait of John Wilkes, churchwarden of St. Margaret's in 1759, alike called for commemoration by the patriotic overseers. By 1765 the box was so overlaid with silver ornaments that there was no room for any more, so a box to enclose the box was acquired. And now tradition had gathered so strong an impetus that no public event could pass without its tribute of a silver plate. Box after box was filled till the whole collection of boxes within boxes had grown to a prodigious complexity. On and on the record goes to the present day, with current events recorded on a Tudor Rose dish designed by Sir Edwin Lutyens for enclosure within the base of the towering structure which now encloses all. Higgledy-piggledy here are all the events that have aroused popular enthusiasm in the last two centuries: the general illumination on the restoration of the health of George III in 1789, the Peace of Amiens in 1802, the repulse of the French China Fleet in 1804, Trafalgar in 1805, the General Peace of 1814, Waterloo in 1815, the Bombardment of Algiers in 1816, the trial of Queen Caroline in 1821, down to Dunkirk and the events of Hitler's war. There are local scenes like the interior of Westminster Hall in 1803 with the St. Margaret's and St. John's Volunteers assembled for a drum-head service and a representation of the Sessions House that stood opposite St. Margaret's. Perhaps the most curious of all the plates from the point of view of the lawyer is a picture of the Court of Chancery in Lincoln's Inn Hall in 1796. Lord Chancellor Loughborough sits aloft in his wig and three-cornered hat; below him are the clerks and close-packed ranks of counsel. Above him is the Hogarth in the place where it hangs to-day. Curiously enough, he has no table before him for papers or notes. The occasion was the triumphant outcome of three years' litigation with a custodian of the Box who had refused to surrender it. A companion plate represents Justice trampling on the prostrate figure of the unsuccessful defendant from whose face a mask drops on to a writhing serpent. The inscription proclaims: "Justice triumphant! Fraud defeated! The Box restored!" In these days there would have been a fresh action for libel in no time.

RICHARD ROE.

Major P. C. G. Hayward, solicitor, of Stowmarket and Needham Market, left £49,549 (£46,429 net).

Mr. Alfred Slack, solicitor, of Chesterfield and Clay Cross, left £20,857 (£20,095 net).

REVIEWS

Lindley on the Law of Partnership. Eleventh Edition. By HENRY SALT, K.C., M.A., LL.B., and HUGH E. FRANCIS, LL.B., of Gray's Inn and Lincoln's Inn, Barrister-at-Law, with a Foreword by the late The Rt. Hon. LORD UTHWATT. 1950. London: Sweet & Maxwell, Ltd. £6 6s. net.

This is one of the legal classics of which it can be said that basically it remains the work of the original author, but that in bulk it has come to exceed anything of which the author can have dreamed. That is probably true as to bulk allowing for the fact that the original treatise dealt also with company law, a subject from which the matter on partnership proper was disentangled in 1888, and despite the fact that this edition is not materially longer than the Tenth. Lord Uthwatt, himself a former editor of the book, testified in a foreword written for the present edition to the care which has always been taken, in incorporating new matter, not to deprive the book as a whole of the authoritative stamp which it derived from Lord Lindley himself.

It is especially valuable to have this guarantee that what is fundamental in the book is also evangelical. Moreover, since the author devised his scheme well before the passing of the Partnership Act of 1890, its layout is not modelled on that statute and he was not troubled by any temptation there might otherwise have been to write a mere commentary on the Act. A logical arrangement which is independent of and yet can be matched by that later worked out by Sir Frederick Pollock makes the book both more interesting and more valuable to the practitioner.

But no branch of English law has stood still since 1891, when the author ceased to be connected with new editions. Plainly a good deal of the credit for the utility of the work in everyday practice must go to subsequent editors, and Mr. Salt and Mr. Francis appear to have covered the Acts and decisions of the last fifteen years in manner exemplary. Supplements are promised, provided that sufficient orders are received, and this apparently will be no innovation in the case of Lindley, for the original author found it convenient to produce supplements in 1863 and 1891. Meanwhile, some of the recent matter relating to medical partnerships has been incorporated in an Appendix of some sixteen pages which includes some regulations operative from the 1st November, 1950.

A good practical feature, not of course new to this edition, is the fullness of the Index and the detail given in the tables of cases and statutes. Between them these sections occupy nearly a quarter of the book.

Brighouse's Forms of Wills. Sixth Edition. By E. F. GEORGE, LL.B., Solicitor of the Supreme Court, and J. H. GEORGE, LL.B., Solicitor of the Supreme Court. 1951. London: Sweet & Maxwell, Ltd. 15s. net.

It is unnecessary to recommend in any detail a book, now in its sixth edition, so well known in solicitors' offices as "Brighouse"; it is enough to say that it is often preferred to other books of precedents when the immediate requirement is a short and simple form of will, clear in its dispositive provisions and easily explicable to the testator. The principal changes since the last edition are threefold. In view of the publication of Mr. Albery's commentary on the Inheritance (Family Provision) Act, 1938, the notes on that Act which appeared in recent editions are now omitted; three useful precedents for the wills of traders have been added; and all the remaining precedents have been revised, principally in the light of recent changes in the incidence and weight of taxation which had made some of the forms in the previous editions impracticable. Some other additions have been made to cover the effects of heavy taxation, as, e.g., a form of power for withdrawing capital from the trusts governing a settled fund. These changes and additions have increased the value of a useful and reliable book, whose merits bear no relation to its size, and which is indeed all the more welcome for packing so much material into its bare hundred pages of text.

The Reform of the Law. Edited by GLANVILLE WILLIAMS, Quain Professor of Jurisprudence in the University of London. 1951. London: Victor Gollancz, Ltd. 18s. net.

Dr. Glanville Williams has gathered, edited, and presumably approved, within the bounds of a short volume, a literally appalling number of legal reforms, proposed by a number of members of the Haldane Society and others, both practising and non-practising lawyers, before the secession of a large number of members of the society and the formation of a new society for Labour lawyers. Many of the old hobby-horses of those who would reform for the sake of reform, as well as many needed reforms, and some obviously politically inspired proposals, are thrown together in this work. Not only must the wheat be separated from the chaff, but also the sheep must be divided from the goats, before it can fully achieve its purpose. At present its infinite variety tends to defeat itself, except for those who see no disadvantage in a law which changes like a chameleon from day to day. The convictions of the authors are discernible from the epithets used. It is "astonishing" that we have not got a Ministry of Justice, case law makes our law "complicated, mysterious and expensive," parts of "the legal machine" are "old fashioned and need replacement," and so on. Nevertheless, there is much in some of the proposals with which lawyers can agree. It is a pity that the great series of reforms in the common law in the Reform Acts of 1934, 1935 and 1945 seem to have lost their impetus to-day. Reforms of the ancient rules of consideration and hearsay evidence and various landlord and tenant matters are long overdue, and the machinery for bringing them into being is all there.

Principles of the Common Law. Sixth Edition. By A. M. WILSHERE, M.A., LL.B., of Gray's Inn, Barrister-at-Law, and B. CHEDLOW, of the Middle Temple and the Midland Circuit, Barrister-at-Law. 1951. London: Sweet & Maxwell, Ltd. £2 12s. 6d. net.

A favourite student's text-book once more appears in one clearly printed volume in place of the two more closely cramped war-time productions. The style and the arrangement, however, have undergone little change, a statement to which we can conscientiously add the comment "fortunately." In point of fact the chapter on Evidence has been dropped, and the rather sketchy examples of pleading are no longer appended. Otherwise the textual changes seem to be confined to a paragraph here and there based on some recent case and an overhaul of the references to, e.g., the Companies and Arbitration Acts, together with an admirable explanation of the Crown Proceedings Act, the Law Reform Acts on the subjects of common employment, contributory negligence and other modern legislative revisions. We applaud this economy of alteration, for when a student's book has proved itself as Mr. Wilshere's has, it usually contains all the illustrations that are required, and recent case-law is apt to loom disproportionately large if too freely quoted in a book of principles.

On the other hand, such vital events in the development of the common law as the *British Movietonews* case [1950] 2 All E.R. 390; *Searle* v. *Wallbank* [1947] A.C. 341; *Reading* v. *A.-G.*, since affirmed on appeal at [1951] 1 All E.R. 617; and *Davies* v. *Swan Motors, Ltd.* [1949] 2 K.B. 291 are dealt with at the appropriate places. We should have expected to see a reference to *Christie* v. *Leachinsky* [1947] A.C. 573. To misquote the number of s. 3 of the Limitation Act, 1939, twice in the same paragraph on p. 276 is an unhappy chance. Section 4 of the Debtors Act, 1869, is given on p. 414, note (*a*), without the amendments enacted by the Crown Proceedings Act, 1947. No doubt these slips will be put right in the future.

In the meantime, as a complete statement of principles and of a good many of the detailed rules of contract (including contracts of a mercantile nature) and tort this attractively produced volume still deserves its popularity.

NOTES OF CASES

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

FORGED MORTGAGES: DELAY IN INFORMING MORTGAGEE

Fung Kai Sun *v.* Chan Fui Hing

Lord Porter, Lord Reid and Sir Lionel Leach. 4th June, 1951

Appeal from a decision of the Full Court of the Supreme Court of Hong Kong.

The plaintiffs employed a manager who fraudently mortgaged their property to the defendant. The plaintiffs' writ claiming against him a declaration that the mortgages were forged and should be set aside was the first intimation to him that it was being alleged that the mortgages were forged. The plaintiffs themselves had had no dealings with the defendant. For some three weeks after learning of the forgery which had been perpetrated they withheld their knowledge from the defendant. He contended by way of defence that that three weeks' silence had deprived him of the opportunity of obtaining restitution from the manager, and that the plaintiffs were accordingly estopped from denying that they had executed the mortgages. The Full Court upheld the judgment given for the plaintiffs at first instance, and the defendant appealed to His Majesty.

LORD REID, giving the judgment of the Board, said that, to benefit themselves, the plaintiffs had deliberately refrained for a time from informing the defendant that his mortgages were forged, and by the end of that time the manager had disappeared. The plaintiffs were not entitled to withhold the information from the defendant. They did so at the risk of being later estopped from asserting the forgeries if the defendant had suffered by their silence. The true test was whether the defendant's chance of obtaining restitution from the manager had been materially prejudiced by the delay. As, on the facts, he had failed to establish such a detriment from the delay as would found a plea of estoppel, the appeal failed.

Appeal dismissed.

APPEARANCES: *K. Diplock*, K.C., and *Rodger Winn* (*Stephenson, Harwood & Tatham*); *R. E. Manningham-Buller*, K.C., and *King Anningson* (*Reid, Sharman & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF APPEAL

INCOME TAX: PROFITS AND LOSSES ON SUB-LETTINGS

Littman *v.* Barron (Inspector of Taxes)

Cohen, Singleton and Jenkins, L.JJ. 13th June, 1951

Appeal from Wynn Parry, J. ([1951] W.N. 170).

In the year ending 5th April, 1943, the appellant taxpayer, as sub-lessor of twenty-three properties, received rent representing a profit on the rent which he himself paid. Five other properties were either sub-let by him for less than the rent he was paying for them or were not sub-let at all. He sought to set off the loss on those five properties against the profits on the twenty-three sub-lettings by virtue of s. 27 (1) of the Finance Act, 1927, which provides that there may be set off against "profits" assessable to tax under Case VI of Sched. D to the Income Tax Act, 1918, "a loss in any transaction . . . being a transaction of such a nature that, if any profit had arisen therefrom, he would have been liable to be assessed in respect thereof under Case VI of Sched. D." Section 15 (1) of the Finance Act, 1940, makes profitable sub-lettings taxable under Case VI by providing that the immediate lessor of any unit of assessment shall be chargeable under the case "in respect of the excess, if any, of the amount of the assessment of the unit for the purposes of Sched. A . . . if the annual value of the unit had been determined (in accordance . . . with the Rules applicable to Sched. A . . . to the Income Tax Act, 1918), by reference to that rent . . . over whichever is the greater of—(*a*) the actual amount of the assessment of the unit for the purposes of Sched. A . . .; or (*b*) the amount of any rent payable by the immediate lessor in respect of the unit . . ." Wynn Parry, J., affirming the Commissioners for the Special Purposes of the Income Tax, held that the taxpayer's above-described loss was not to be set off against his profits, and the taxpayer appealed. (*Cur. adv. vult.*)

COHEN, L.J., said that in his opinion the excess rents subjected to tax by s. 15 of the Act of 1940 were annual profits taxable under Sched. D. The definition of what Case VI covered showed that anything assessed under that case must be a profit. The true effect of s. 15 was that it directed a tax on profits, the amount of which was ascertained by working out the arithmetic prescribed by the section. Next, there was, in his opinion, a "transaction" here within the meaning of s. 27 (1) of the Act of 1927 out of which the loss to be set off arose, the transaction being the acquisition of the property and the subsequent management of it. He rejected the Attorney-General's contention that the words "loss" and "profit" in s. 27 must be construed in their ordinary commercial sense. If that were so, s. 27 could clearly not apply because, on the formula prescribed by s. 15 of the Act of 1940, there might be in a given year a commercial profit yet no assessment under Case VI because the Sched. A assessment was higher than the rent received from the sub-tenant. Accordingly the loss in question could be set off, and the appeal succeeded.

SINGLETON, L.J., gave judgment agreeing that the appeal succeeded.

JENKINS, L.J., dissenting, said that what s. 15 of the Act of 1940 made chargeable to tax under Case VI of Sched. D was the excess of a notional Sched. A assessment based on rent actually received over the greater of two specified amounts. The excess so charged bore no necessary relation to the immediate lessor's profit for the year in the ordinary or business sense of the word. In his view the five unprofitable transactions were not "of such a nature, etc.," within the meaning of s. 27 (1). The references to loss and profits in the subsection were directed to profit and loss in the commercial sense. The taxpayer's reasoning enabled him to substitute "excess" for "profits" in s. 27 (1). The truth was that s. 15 of the Act of 1940 was directed not to taxation of commercial profits, but to more effective taxation of annual value. Case VI of Sched. D was used as mere machinery. He would dismiss the appeal.

Appeal allowed.

APPEARANCES: *J. Millard Tucker*, K.C., and *N. E. Mustoe* (*Tobin & Co.*); *Sir Frank Soskice*, K.C., A.-G., and *R. P. Hills* (*Solicitor of Inland Revenue*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

DIVISIONAL COURT

REFERENCE TO RENT TRIBUNAL: SUBSEQUENT APPLICATION TO COUNTY COURT

R. *v.* Judge Pugh; *ex parte* Graham

Lord Goddard, C.J., Lynskey and Devlin, JJ.
14th June, 1951

Application for an order of mandamus.

In September, 1950, the tenants of two flats referred their tenancies to the local rent tribunal, which reduced the rents, proceeding on the basis that the flats had been first let since 1st September, 1939. The two flats had previously formed part of one maisonette. One of the tenants, the present applicant, then applied to the county court for apportionment of the rent of the maisonette as between himself and the other tenant, alleging that the maisonette had been let before 1st September, 1939; that the two flats were part of that maisonette to which no structural alteration had been effected; that the two flats were accordingly not first let after 1st September, 1939; and that the rent tribunal had accordingly had no jurisdiction. The county court judge declined jurisdiction to hear the application for apportionment on the grounds that, as the landlord contended, the tribunal had already determined the standard rent of the two flats; that he was being asked in effect to hear an appeal from the rent tribunal; and that if he made an apportionment there would be two standard rents for each flat. The tenant now applied for an order of mandamus directing the county court judge to determine the application for apportionment.

LORD GODDARD, C.J., said that it was clear from *London Corporation* v. *Cox* (1866), 2 Eng. and Ir. App. Cas. 239, that, where the decision of an inferior court was relied upon by one party to proceedings as conclusive against the other, it must be shown by the party so relying that the inferior court had jurisdiction to give the decision relied upon. The county court judge was in error in not appreciating that the landlord's objection

that the rent tribunal's decision precluded the tenant from now applying for apportionment was a matter of defence and not one going to jurisdiction. The county court judge should accordingly have proceeded with the hearing and tried the issue whether or not the two flats had been let as one dwelling-house before 1st September, 1939. Then, if he found that they had been so let, he would *prima facie* have to apportion the rent between them. An order of mandamus must therefore issue.

LYNSKEY, J., agreed.

DEVLIN, J., agreeing, said that the county court judge's view that for him to entertain the application for apportionment involved his invading the right of the Divisional Court to supervise the rent tribunal showed a misunderstanding of the nature of the powers which that court exercised by way of certiorari and mandamus: those powers were not exclusive, but were used in order to give a speedy remedy against obvious excesses of jurisdiction. It was clear on the authorities that, when any question was raised as to the jurisdiction of an inferior court—a court having limited jurisdiction—the question must be tried by the court before which it was raised.

Application granted.

APPEARANCES: *C. Lawson* (*Richard Davies & Son*) (tenant); *B. Finlay* (*Crawley & de Reya*) (landlord).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

SURCHARGING OF LOCAL AUTHORITIES: MEANING OF "NEGLIGENCE"

Pentecost and Another *v.* London District Auditor

Lord Goddard, C. J., Lynskey and Devlin, JJ.
14th June, 1951

Appeal from the District Auditor for the London Audit District.

Complaint having been made by two ratepayers that the responsible officers of Wandsworth Borough Council had paid contractors in full for work alleged to have been defective, the respondent auditor, in his written reasons for not imposing any surcharge under s. 228 (1) of the Local Government Act, 1933, said that, while there were isolated instances in which defective work had escaped the notice of the borough council's supervising officers, they did not appear to him (the auditor) to have been of such an extent or of such frequent occurrence as to warrant his finding that "but for gross negligence on the part of the officers concerned they would have come to light." The complainants appealed. By s. 228 (1) of the Act of 1933, "It shall be the duty of the district auditor at every audit held by him . . . (*d*) to surcharge the amount of any loss or deficiency upon any person by whose negligence or misconduct the loss or deficiency has been incurred . . ."

LYNSKEY, J., said that epithets applied to the word "negligence" were meaningless so far as the common law was concerned: a man was either guilty of negligence or not. Degrees of negligence were known only to the criminal law, particularly in reference to charges of motor manslaughter. The word negligence in s. 228 (1) of the Act of 1933 was used in its ordinary meaning, and could not be interpreted as meaning gross negligence. Therefore the district auditor had used a wrong expression in his judgment; and he had apparently done so because that had been his interpretation of *R.* v. *Browne* [1907] 2 Ir.R. 505 and *Davies* v. *Cowperthwaite* (1938), 159 L.T. 43. As, however, a reading of all his findings showed that the facts disclosed no negligence at all, there was no occasion to disturb his decision.

Appeal dismissed.

APPEARANCES: *Dudley Collard* (*Seifert, Sedley & Co.*); *Erskine Simes*, K.C., and *A. H. Bray* (*Sharpe, Pritchard & Co.*); *M. L. Lyell* (*Sharpe, Pritchard & Co.*, for the *Town Clerk*, Wandsworth.)

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

IDENTITY CARDS: VALIDITY OF NATIONAL REGISTRATION ACT, 1939

Willcock *v.* Muckle

Lord Goddard, C.J., Evershed, M.R., Somervell and Jenkins, L.JJ., Hilbery, Lynskey and Devlin, JJ.
26th June, 1951

Case stated by Middlesex justices.

The defendant was charged with contravening s. 6 (4) of the National Registration Act, 1939, by failing to produce his identity card when called on to do so by the prosecutor, a police officer. It was contended for the defendant at the close of the case for the prosecution that the National Registration Act, 1939, by s. 12 (4), was to "continue in force until such date as His Majesty may by Order in Council declare to be the date on which the emergency, that was the occasion of the passing of this Act, came to an end, and shall then expire except as respects things previously done or omitted to be done"; that in pursuance of the Courts (Emergency Powers) (End of Emergency) Order, 1950, dated 9th October, 1950, it was declared that 8th October, 1950, was the date on which the emergency which was the occasion of the passing of the Courts (Emergency Powers) Act, 1939, came to an end; that the emergency which was the occasion of the passing of the Courts (Emergency Powers) Act, 1939, was the same emergency which was the occasion of the passing of the National Registration Act, 1939; that, therefore, the right of a police constable in uniform to request the production of an identity card no longer existed; and that the summons was accordingly misconceived and disclosed no offence. The justices convicted the defendant, but granted him an absolute discharge. The defendant appealed.

LORD GODDARD, C.J., delivering the judgment of himself, Somervell and Jenkins, L.JJ., and Hilbery and Lynskey, JJ., said that the National Registration Act, 1939, was passed two days after the outbreak of war. Section 12 (4) raised a question of construction. It was common ground that some Order in Council must be found which ended the Act, and that no Order in Council existed which expressly concerned the Act in question. He and the members of the court who concurred in his judgment thought that, on the true construction of s. 12 (4), it was contemplated that, to bring to an end any one of the Emergency Acts of 1939 in which the particular formula was used, there must be an Order in Council referable to the particular Act. It followed that different Orders in Council could terminate different Acts where that formula was used, and on different dates. Accordingly, in his opinion, the Act in question was not terminated by the first Order in Council, which was passed as long ago as February, 1946, concerning regional commissioners. As there had been no Order in Council terminating the National Registration Act, 1939, it could not be said to have terminated.

However, because the police might have certain powers it did not follow that they should exercise them on all occasions as a matter of course. It was obvious that the police now as a mattter of routine demanded the production of identity cards whenever they stopped a motorist for any offence. It was one thing if they were searching for a stolen car or for particular motorists engaged in committing crime; but to demand the production of an identity card from all and sundry—for instance, from a woman leaving her car outside a shop longer than she should—was wholly unreasonable. The Act was passed as a measure of security and not for the other purposes for which identity cards were now sometimes sought to be used. To use Acts of Parliament passed in war time for particular purposes now that war had ceased tended to turn law-abiding subjects into law breakers, which was most undesirable, and the good relations between the police and the public would be likely to suffer. He hoped that, if such matters came before benches of justices, they would treat the case in the same way and grant an absolute discharge, except where there was a real reason for demanding the production of the registration card. If the police did not think they had sufficient powers they should ask Parliament for them. There would be no order as to costs.

EVERSHED, M.R., said that although he did not dissent from the previous judgment, he had difficulty in saying that Parliament had been concerned with the Acts of August and September, 1939, on the footing that there were different and distinct emergencies; or that, if there was only the one emergency, Parliament intended to deal with different aspects of that one emergency. But the point was one of construction, and he felt a strong inclination towards the argument that the usual formula was a periphrastic statement of the words "the present emergency" (see the wording of the first of the Acts, the Emergency Powers (Defence) Act, 1939). But the matter did not entirely rest there, and, having regard to the view taken by the majority, it would be impertinent to suggest that the matter of construction was not one which was fairly and equally open to different meanings. He had been further deterred from expressing a final view on the construction point by the fact that, if the defendant's argument were correct, he (his lordship) was far from being satisfied that the conclusion would not be that the Orders in Council so far made would not have had any effect at all on the ground that they were made *alio intuitu*. He emphatically affirmed the remarks of the Lord Chief Justice on demands by the police for the production of identity cards.

DEVLIN, J., said that he shared the doubts expressed by Evershed, M.R., on the point of construction.

Appeal dismissed.

APPEARANCES: *A. P. Marshall*, K.C., *Emrys Roberts* and *B. T. Wigoder* (*Lucien Fior*); *John Maude*, K.C., and *Vernon Gattie* (*The Solicitor, Metropolitan Police*); *Sir Frank Soskice*, K.C., A.-G., and *J. P. Ashworth* (*Treasury Solicitor*) appeared as *amici curiæ*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

GAMING: CONTEMPT OF COURT

R. *v.* Weisz and Another; *ex parte* Hector MacDonald, Ltd.

Lord Goddard, C.J., Hilbery and Devlin, JJ. 28th June, 1951

Application for a writ of attachment or for committal for contempt of court.

The applicants were a company of bookmakers against whom, in respect of a debt owed by them to him on betting transactions, the respondent Weisz, by his solicitor, the second respondent, had issued a writ specially endorsed with a claim for the sum in question as being due upon an account stated. The grounds of the application were that the respondents had been concerned in issuing a writ in the High Court claiming a sum of money as due to Weisz from the applicant bookmakers on an account stated; that the endorsement on the writ was fictitious; that there never had been any account stated between the parties; and that in fact it was a naked claim to recover money won by betting, so that the endorsement was a device to conceal from the court the true nature of the action, which was in truth one prohibited by the Gaming Act, 1845. (*Cur. adv. vult.*)

LORD GODDARD, C.J., reading the judgment of the court, said that the gravamen of the case against the respondent solicitor was that the endorsement on the writ was wholly fictitious and was designed to conceal from the court the true nature of the plaintiff's claim. It was abundantly clear that there never had been any account stated between the parties, even in respect of betting transactions. What had to be decided in the present case did not depend in the least on any technical question as to the nature of an account stated: this was simply a naked action for the recovery of money alleged to have been won by betting, which the Gaming Act, 1845, prohibited. Such an action was therefore an abuse of the process of the court, but it was not necessarily a contempt of court to bring it. But to attempt to deceive the court by disguising the true nature of the claim was a contempt. It was putting forward what the old cases called a feigned issue. Counsel for the respondent solicitor had not sought to justify the endorsement of this writ or to dispute that in fact it disclosed a fictitious case. The very fact that on many previous occasions resort had been had to that particular form of endorsement in cases brought simply for the recovery of money won at betting was what gave the present application importance. It was time that that practice should be stopped in no uncertain manner. Parliament had ordained that the courts were not to be used for that purpose. Many people might be deterred from defending such actions, if brought, for fear of publicity. If the writ were truthfully endorsed, for money won at betting, it would be wholly improper to allow a default judgment to be entered. The duty of the Central Office would be to bring the matter before the Practice Master, and he in his turn ought not to allow a judgment to be signed which would, in effect, be contrary to the statute. If a writ were endorsed for a fictitious but apparently legal cause of action, a default judgment could be signed as of course, and accordingly in their opinion that led to an interference with or distortion of the course of justice. It was, in the opinion of the court, beyond question that to disguise a cause of action so as to conceal its true nature, when, in truth, it was one prohibited by statute, was a contempt; and, as the endorsement in the present case was signed in the name of the solicitor's firm, and he admitted that he was the partner having charge of the proceedings, he must take the responsibility and be held guilty of a contempt. With regard to the respondent Weisz, the court accepted his evidence that he was abroad when the writ was actually issued and that he did not know of its terms. It had never yet been held that merely to bring, or cause to be brought, an action which was an abuse could be treated as a contempt, even though it might have been brought for the purpose of pressure or what might be called "showing up." If it were held that to bring an action prohibited by the Gaming Act, 1845, was punishable, it would mean that the court was treating as criminal something for which Parliament had not provided a penalty. As a general rule, stopping the action *in limine* and awarding costs against the plaintiff must be regarded as the appropriate sanction. There might be exceptions. The contempt in the present case lay not in bringing an action forbidden by the Gaming Act but in bringing it as a feigned issue so as to conceal its true nature from the court. For that they could not hold the respondent Weisz responsible. With regard to the question of penalty, the court did not overlook that the solicitor had sent the papers to counsel, who settled the endorsement. They had not been asked to hear any application against counsel, and therefore only said that no doubt, if counsel had been asked to explain his action, he would, like the solicitor, have said that that form of endorsement had been so often used without its ever having been said to be a contempt. The court hoped, however, that counsel as well as solicitors would always bear in mind that they owed a duty to the court as well as to their clients, and that a main object in requiring the signature of counsel or a solicitor to pleadings settled by them was to prevent issues, whether called feigned or fictitious, from being presented to the court. Henceforward there would be no excuse for using that form of endorsement, or, they would add, one such as "money due under a contract in writing made between the parties," when the claim was simply in respect of gaming and wagering. While holding the solicitor guilty of contempt, the court acquitted him of any intention to act in contempt of the court, and he had by his counsel offered a full apology. They therefore imposed no penalty on him other than that he must pay the costs of the application. Though the respondent Weisz was not guilty of contempt, the court did not propose to make any order as to his costs. He had had a narrow escape, mainly owing to having gone abroad before the writ was issued.

Counsel for the solicitor then called attention to a number of actions brought by the applicant bookmakers with similarly endorsed writs, and submitted that they should not in those circumstances be given the costs of the application.

LORD GODDARD, C.J., said that, in view of what had been disclosed to the court, it was obvious that the applicant bookmakers had been using endorsements in the very way of which they had complained. They had even got one judgment which they ought never to have got. The court accepted the respondent solicitor's apology, and would make no order as to costs.

APPEARANCES: *Gerald Gardiner*, K.C., and *Phineas Quass* (*Ronald M. Simons*); *N. R. Fox-Andrews*, K.C., and *J. Burge*; *John Maude*, K.C., and *F. Wishart* (*Campbell, Hooper & Todd*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY DIVISION

CUSTODY: ILLEGITIMATE CHILD

H. *v.* H.

Barnard, J. 22nd June, 1951

Application for custody.

The application was by the mother of an illegitimate child. The respondent father did not contest the application. The child was born in 1938 when the mother was not married to the father, but to another man. She and the father were then living in adultery. The mother's earlier marriage was dissolved in 1943, on the ground of that adultery, and shortly afterwards the mother and the father, who had continued to live together after the birth of the child, were married. On 13th March, 1951, the mother was granted a decree *nisi* of divorce on the ground of the father's cruelty and desertion, the decree being made absolute on 17th May, 1951. In July, 1947, the mother applied to a court of summary jurisdiction for maintenance for herself and the child, and was awarded maintenance for herself only, the application in respect of the child being dismissed on the ground that the child was not "a child of the marriage" (see s. 5 (*b*) of the Summary Jurisdiction (Married Women) Act, 1895). (*Cur. adv. vult.*)

BARNARD, J., said that in *M.* v. *M.* [1946] P. 31, Denning, J., had held that s. 193 (1) of the Supreme Court of Judicature (Consolidation) Act, 1925 (replaced by s. 26 (1) of the Matrimonial Causes Act, 1950) applied to a child legitimated by the subsequent marriage of the parents, and had refused to follow *Bednall* v. *Bednall* [1927] P. 225; *Green* v. *Green* [1929] P. 101 and *Jones* v. *Jones* (1929), 45 T.L.R. 292. Denning, J.'s decision in *M.* v. *M.*, *supra*, was criticised in *Colquitt* v. *Colquitt* [1948] P. 19. *Prima facie*, the term "child" or "children" in a statute meant legitimate child or children, but a wider meaning might be given where that meaning was more consonant with the object of the statute (see *Woolwich Union* v. *Fulham Parish* [1906] 2 K.B. 40 and *Morris* v. *Britannic Assurance Co., Ltd.* [1931] 2 K.B. 125). There were many statutes applicable to children containing

sections which specifically defined the expression "child" as including an illegitimate child for the purpose of the statute. There was no definition of the expression in the Matrimonial Causes Acts, and he must therefore consider what the object of those statutes was. The preamble to the Matrimonial Causes Act, 1857, made it clear that its object was to constitute a court with exclusive jurisdiction in matters matrimonial, with authority in certain cases to decree the dissolution of a marriage. The Act also gave the court jurisdiction in matters ancillary to a dissolution. It was concerned with marriage, and he could not think that the Legislature had anything but the children of the marriage in mind. He agreed with the view of the Divisional Court in *Colquitt* v. *Colquitt, supra*, and the statement in *Green* v. *Green, supra*, that "children" in s. 35 of the Act of 1857, and s. 193 of the Act of 1925, meant legitimate children. He was concerned solely with a claim for custody. The mother here had the *de facto* custody, and, so far as maintenance was concerned, the fact that a man married a woman with a young child, whether he were the father or not, was a matter which the court would take into consideration in making an award of maintenance to the wife after a dissolution of the marriage. Application dismissed.

APPEARANCES: *J. B. Gardner* (*J. A. H. Powell*, The Law Society Divorce Department).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

SURVEY OF THE WEEK

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time:—

Guardianship and Maintenance of Infants Bill [H.L.] [26th June.

To extend jurisdiction under the Guardianship of Infants Acts, 1886 to 1925, to certain county courts and courts of summary jurisdiction; to provide for increasing the sums that may be awarded by courts of summary jurisdiction under the said Acts or under section seven of the Summary Jurisdiction (Married Women) Act, 1895, towards the maintenance of children, for enabling payments of maintenance under the said section seven to be continued in respect of children over the age of sixteen engaged in a course of education or training, and for requiring certain payments of maintenance in respect of children under the said Acts or under the said section seven to be paid without deduction of income tax; and for purposes connected with the matters aforesaid.

Pier and Harbour Provisional Order (Lymington) Bill [H.C.] [26th June.

Sir William Turner's Hospital at Kirkleatham Bill [H.C.] [26th June.

Slaughter of Animals (Amendment) Bill [H.C.] [26th June.

Walsall Corporation (Trolley Vehicles) Provisional Order Bill [H.C.] [22nd June.

Read Second Time:—

Coal Industry Bill [H.C.] [26th June.

Read Third Time:—

Great Yarmouth Port and Haven Bill [H.C.] [27th June.

In Committee:—

Fireworks Bill [H.C.] [28th June.

Rivers (Prevention of Pollution) Bill [H.C.] [26th June.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read Second Time:—

Festival of Britain (Additional Loans) Bill [H.C.] [25th June.

Liverpool Extension Bill [H.L.] [25th June.

Read Third Time:—

Dee and Clwyd River Board Bill [H.L.] [25th June.

Mineral Workings Bill [H.C.] [29th June.

Ministry of Materials Bill [H.C.] [27th June.

Rural Water Supplies and Sewerage Bill [H.C.] [29th June.

Uttoxeter Urban District Council Bill [H.L.] [25th June.

B. QUESTIONS

TREASON (REVIEW OF LAW)

The ATTORNEY-GENERAL stated that the Government was considering whether, consistently with the preservation of the personal freedom which we in this country regarded as indispensable, certain changes in the existing law of treason could be made. [25th June.

MAGISTRATES (REMOVAL)

Sir FRANK SOSKICE said he did not think it would be necessary or desirable to introduce legislation giving magistrates a right of appeal to the Judicial Committee of the Privy Council against the exercise by the Lord Chancellor of his absolute power to remove magistrates. [25th June.

LANDS TRIBUNALS (APPEALS)

The ATTORNEY-GENERAL said that during the twelve months ending 31st May, 1951, the ratio of the price offered by the acquiring authority on compulsory purchase of land compared with the amount awarded by the Lands Tribunal on appeal was 1: 1·379. He emphasised that this was an average figure and that the amount awarded in each case necessarily depended on the circumstances of that case. [25th June.

LAND DEVELOPMENT (COMPENSATION)

The CHANCELLOR OF THE EXCHEQUER stated that up to 25th May the Central Land Board had determined that about 112,000 claims under s. 58 of the Town and Country Planning Act, 1947, had no development value and therefore no compensation was payable. There were no separate records of appeals against this class of determination, but there were 420 notices of appeal to the Lands Tribunal against all determinations made under s. 58. [26th June.

STATUTORY INSTRUMENTS (INDEX)

Mr. DOUGLAS JAY said that when all the volumes of the new edition of Statutory Rules and Orders had appeared it would be possible to issue a comprehensive index which would have the advantage of covering all instruments in force up to the end of 1951. It was expected that such an index would appear in the early months of 1952. [26th June.

DEVELOPMENT PLANS (EXTENSIONS)

The MINISTER OF LOCAL GOVERNMENT AND PLANNING stated that nine local planning authorities had so far submitted development plans in accordance with s. 5 of the Town and Country Planning Act, 1947; fourteen more would do so by 1st July; 113 had asked for and been granted extensions; twenty of these extensions were for a few weeks only, until the next meeting of the local planning authorities. Ten other authorities had not yet asked for extensions, but were expected to do so. [26th June.

IDENTITY CARDS

The Minister of Health (Mr. MARQUAND) stated that by s. 6 (4) of the National Registration Act, 1939, and regulations made thereunder, the following persons were authorised to demand production of an identity card: a police officer in uniform; a member of the Armed Forces in uniform on duty, if he has reason to suspect that the person concerned is a deserter from the Forces or an escaped prisoner of war; a national registration officer. Mr. Marquand said that food executive officers were national registration officers. In addition, under Defence Regulation 60cc, a post office official might require production of the card as a condition of doing business on a matter in which evidence of identity was material, e.g., withdrawal from a savings bank account. [28th June.

JUSTICES OF THE PEACE ACT

Mr. CHUTER EDE stated that s. 10 of the Justices of the Peace Act, 1949 (which abolished certain commissions of the peace),

would come into force on 1st October, 1951. Two steps were involved in bringing into force the remaining provisions of the Act. The first step would be taken on 1st April, 1952, and it would be to set up magistrates' courts committees and to give the committees power to review, in advance of the second step, the salaries to be paid to justices' clerks when the committees became responsible for them and such other matters as would then arise. The second step would be to transfer to these committees the full functions conferred on them by the Act (including the transfer to their employment of the staffs of the magistrates' courts) and to bring into force the financial provisions of the Act (including ss. 8, 27 and 36). This would be done on 1st April, 1953. [28th June.

STATUTORY INSTRUMENTS

Bread (Amendment No. 2) Order, 1951. (S.I. 1951 No. 1077.)

Control of Building Operations (No. 16) Order, 1951. (S.I. 1951 No. 1082.)

Electricity (Pension Rights) (Particular Schemes) Regulations, 1951. (S.I. 1951 No. 1079.)

Flour Confectionery Order, 1951. (S.I. 1951 No. 1078.)

Milk Distributive Wages Council (England and Wales) Wages Regulations (Holidays) Order, 1951. (S.I. 1951 No. 1087.)

Puerperal Pyrexia Regulations, 1951. (S.I. 1951 No. 1081.)

Rubber Manufacturing Wages Council (Great Britain) Wages Regulation (Holidays) Order, 1951. (S.I. 1951 No. 1080.)

Sewing Cottons and Threads (Maximum Prices) (No. 2) Order, 1951. (S.I. 1951 No. 1092.)

Sheep Scab (Amendment) Order, 1951. (S.I. 1951 No. 1086.)

Telegraph (British Commonwealth and Foreign Written Telegram) Amendment No. 1 Regulations, 1951. (S.I. 1951 No. 1108.)

Telegraph (Inland Written Telegram) Amendment No. 1 Regulations, 1951. (S.I. 1951 No. 1107.)

Timber (Control) Order, 1951. (S.I. 1951 No. 1067.)

Utility Curtain Cloth Order, 1951. (S.I. 1951 No. 1058.)

Utility Footwear (Maximum Prices) Order, 1951. (S.I. 1951 No. 1093.)

Utility Footwear (Supply, Marking and Manufacturers' Prices) Order, 1951. (S.I. 1951 No. 1084.)

Utility Furniture (Marking and Supply) (No. 2) (Amendment No. 2) Order, 1951. (S.I. 1951 No. 1070.)

Utility Upholstery Cloth Order, 1951. (S.I. 1951 No. 1057.)

POINTS IN PRACTICE

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 88-90 Chancery Lane, W.C.2, and contain the name and address of the subscriber, and a stamped addressed envelope.

Rent Restrictions—1915 Act—Member of Tenant's Family

Q. It is sought to obtain possession of a dwelling-house protected by the Rent Restrictions Acts on the grounds that the occupier is a trespasser. The facts are as follows: In 1918 the father of the present occupier was the tenant, and a notice to quit and notice of increase of rent on account of increase of rates was served upon him in June, 1918. He died three weeks later, The tenant's widow, who had resided with him, remained in occupation until her death recently and there have been increases of the standard rent whilst she has occupied. The property was not registered as decontrolled. Do you consider that the original tenant became a statutory tenant and that the widow remained in occupation protected, as she would have been under s. 12 (1) (*g*) of the 1920 Act had this operated at the time of the tenant's death?

A. The Rent Act in force in 1918 was the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, which in s. 2 (1) (*d*) contains a definition of "tenant" identical with that in s. 12 (1) (*f*) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, but does not contain any provision corresponding to s. 12 (1) (*g*) of the 1920 Act. In *Lovibond* v. *Vincent* [1929] 1 K.B. 687 it was held that the statutory tenancy which arose in favour of a protected tenant upon service of a notice to quit was not transmissible under s. 12 (1) (*f*) of the 1920 Act to the persons deriving title under him. Accordingly there does not appear to be any ground for suggesting that the statutory tenancy of the original tenant passed to his widow on his death in 1918, who would appear to have become a contractual tenant by reason of payment and acceptance of rent. We do not consider that there can be any doubt but that the original tenant was a statutory tenant at the date of his death, since the provisions of s. 1 (3) of the 1915 Act which lay down the terms upon which a tenant can retain possession are similar to those contained in s. 15 (1) of the 1920 Act (see *Artizans, etc., Dwellings Co.* v. *Whitaker* [1919] 2 K.B. 301). If the increases of rent on account of increased rates made the recoverable rent higher than the standard rent (*Mills* v. *Bryce* [1951] 1 All E.R. 111) we do not consider that it is open to the landlord to contend that the widow's contractual tenancy had not become a statutory tenancy (*Baxter* v. *Eckersley* [1950] 1 K.B. 480) and in our opinion the present occupier is protected under s. 12 (1) (*g*) of the 1920 Act.

Title—Recital that Grantee Entitled to Property in Equity

Q. An abstract of title to freehold property shows that the property was vested in A, who died in 1906, having by his will bequeathed his residuary estate to his trustees B and C upon trust for sale and conversion and to invest the proceeds of sale and to hold the investments upon various trusts, details of which are not revealed. The abstract shows the probate of A's will, and thenceforth, after tracing the title through certain court orders and deeds of appointment of new trustees, shows the legal estate to be vested in 1947 in P and Q as the trustees of A's will. There has been no written assent affecting the property. By a conveyance dated 31st December, 1947, which recites that Y is entitled to the property in equity and has requested that the property should not be sold but that it should be conveyed to him as land, P and Q convey the property to Y absolutely. This conveyance is stamped 10s. but is not adjudicated. Is a purchaser of the property from Y entitled to any evidence of Y's right to have the property vested in him for his own benefit? Is there any statutory authority on the point analogous to s. 36 (7) of the Administration of Estates Act, 1925?

A. The recital that a grantee is entitled to the property in equity is a practical device to keep the trusts off the title and its use is sanctioned by many years of conveyancing custom (see *Re Harman and Uxbridge and Rickmansworth Railway Co.'s Contract* (1833), 24 Ch. D. 720; *Re Blaiberg and Abrahams* [1899] 2 Ch. 340), and a purchaser is not entitled to go behind that recital unless he has received notice of the details of trusts (not merely of their existence) by reason of some earlier document being abstracted so as to show them in detail (*Re King's Settlement* [1931] 2 Ch. 294). In the present case, these earlier trusts are not revealed and title to the legal estate only is deduced in accordance with the usual conveyancing practice. Accordingly, provided the title to the legal estate in the trustees as at 31st December, 1947, is properly shown, Y's title to call for a conveyance is not required.

Estate Agent's Advertising Expenses

Q. We would refer to your point in practice at 94 Sol. J. 807 with reference to estate agent's out-of-pocket expenses. Can you kindly let us know what sort of item is included in the out-of-pocket expenses which are paid for in the agent's commission? We presume that these do not extend to advertising expenses.

A. The usual practice in the case of sale by private treaty is for all out-of-pocket expenses (including advertising expenses) to be included in the commission payment. It is unusual for extras such as travelling, etc., to be charged, though this is only custom and not a legal rule. If items additional to commission are to be charged this should be separately agreed. In case of sales by auction advertisement charges are normally made in addition to commission.

NOTES AND NEWS

Honours and Appointments

The Lord Chancellor has decided to appoint Lt.-Col. G. S. A. WHEATCROFT to be a Master of the Supreme Court of Judicature, Chancery Division, on 1st October, 1951.

Mr. E. A. STEVENS, Registrar of the Eastbourne and Hastings County Courts and District Registrar in the District Registries of the High Court of Justice in Eastbourne and Hastings, has been appointed to be in addition the Registrar of Lewes as from 2nd July, 1951, in place of Mr. J. R. Morton Ball. Mr. Morton Ball will continue to be the Registrar of the Brighton, Worthing and Haywards Heath County Courts, and District Registrar in the District Registry of the High Court of Justice in Brighton.

Mr. M. H. B. GILMOUR, chief solicitor to the British Transport Commission, has been appointed chief solicitor and legal adviser on the retirement of Mr. Miles Beevor, chief secretary and legal adviser.

Mr. ROY SIDLE has been appointed to the solicitors' department of the Kent County Council.

Personal Notes

Mr. S. H. Binns, solicitor, of Keighley, was married on 26th June to Miss Joyce Mary Greenwood, of Keighley. The bridegroom's father has for many years represented The Solicitors' Law Stationery Society in the North-West of England.

Miscellaneous

As from 28th July next the address of the *London Gazette* will be :—H.M. Stationery Office, Atlantic House, Holborn Viaduct, London, E.C.1. Telephone : CITy 9876. Telegraphic address : Hemstonery, Cent.

WEST SUSSEX (NORTHERN SECTION) DEVELOPMENT PLAN

The above development plan was, on 22nd June, 1951, submitted to the Minister of Town and Country Planning for approval. It relates to land within the county of West Sussex and comprises land within the undermentioned districts. A certified copy of the plan, as submitted for approval, may be inspected free of charge at the County Hall, Chichester, from 10 a.m. to 4 p.m. (Saturdays : 10 a.m. to 12 noon). Certified copies of or extracts from the plan, so far as it relates to the districts concerned, may be inspected free of charge at the same hours at the following places : Horsham Urban District—Council Offices, Horsham Park, Horsham ; Chanctonbury Rural District—Council Offices, Storrington ; Horsham Rural District—Comewell House, North Street, Horsham ; Midhurst Rural District—Council Offices, Midhurst ; Petworth Rural District—Council Offices, Petworth. Any objection or representation with reference to the plan may be sent in writing to the Secretary, Ministry of Local Government and Planning, Chesham House, 136–150 Regent Street, London, W.1, before 11th August, 1951, and should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the West Sussex County Council, and will then be entitled to receive notice of the eventual approval of the plan.

CITY AND COUNTY OF KINGSTON UPON HULL DEVELOPMENT PLAN

The above development plan was, on 26th June, 1951, submitted to the Minister of Local Government and Planning for approval. It relates to land within the City and County Borough of Kingston upon Hull. A certified copy of the plan, as submitted for approval, may be inspected free of charge at Room 39, Town Clerk's Department, Guildhall, Kingston upon Hull, from 10 a.m. to 5 p.m. on each weekday except Saturday. Any objection or representation with reference to the plan may be sent in writing to the Secretary, Ministry of Local Government and Planning, Whitehall, London, S.W.1, before 15th August, 1951, and should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the City and County of Kingston upon Hull Corporation and will then be entitled to receive notice of the eventual approval of the plan.

COUNTY OF LEICESTER DEVELOPMENT PLAN

The above development plan was, on 29th June, 1951, submitted to the Minister of Local Government and Planning for approval. It relates to land in the administrative county of Leicester and comprises land in the undermentioned districts. A certified copy of the plan, as submitted for approval, may be inspected free of charge at the County Planning Department, 14 Friar Lane, Leicester, from 9 a.m. to 12.40 p.m. and 2 p.m. to 5.15 p.m. (Saturdays : 9 a.m. to 12.30 p.m.). Certified copies of or extracts from the plan, so far as it relates to the districts concerned, may be inspected free of charge at the offices of the following urban district councils : Ashby-de-la-Zouch, Ashby Woulds, Coalville, Hinckley, Market Harborough, Oadby, Melton Mowbray, Shepshed, Wigston ; of the following rural district councils : Ashby-de-la-Zouch, Barrow-upon-Soar, Billesdon, Blaby, Castle Donington, Lutterworth, Market Bosworth, Market Harborough, Melton and Belvoir ; and of the Loughborough Borough Council. Any objection or representation with reference to the plan may be sent in writing to the Secretary, Ministry of Local Government and Planning, 23 Savile Row, London, W.1, before 11th August, 1951, and should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Clerk of the County Council, and will then be entitled to receive notice of the eventual approval of the plan.

THE SOLICITORS ACTS, 1932 TO 1941

RICHARD WILLIAM SAMUEL WINTER, of The Magistracy, Kowloon, Hong Kong, solicitor, having, in accordance with the provisions of the Solicitors Acts, 1932 to 1941, made application to the Disciplinary Committee constituted under the Act that his name might be removed from the Roll of Solicitors at his own instance on the ground that he desires to be admitted as a student of the Honourable Society of Gray's Inn, an Order was, on the 21st day of June, 1951, made by the Committee that the application of the said Richard William Samuel Winter be acceded to and that his name be removed accordingly from the Roll of Solicitors of the Supreme Court.

SOCIETIES

At the annual meeting of Liverymen and Freemen of the WORSHIPFUL COMPANY OF SOLICITORS OF THE CITY OF LONDON held at Tallow Chandlers' Hall, Mr. Deputy H. W. Morris, C.C., was installed as master, Lt.-Col. R. Q. Henriques, T.D., J.P., as Senior Warden and Mr. E. Alston Mott as Junior Warden for the ensuing year. At the court meeting which followed the annual meeting, Mr. R. A. A. Holt, Mr. D. H. Nicholls, Mr. E. L. Goulden and Mr. G. E. Coopman were admitted to the Livery.

The CIVIL SERVICE LEGAL SOCIETY gave a reception in honour of its silver jubilee at New Hall, Lincoln's Inn, on 28th June. The president of the society, Sir Stephen Low, received the guests, who included :—The Lord Chancellor, the Lord Chief Justice, the Master of the Rolls and Lady Evershed, Lord and Lady Merriman, Sir Frank and Lady Soskice, Sir Lynn and Lady Ungoed-Thomas, Mr. John Wheatley, Sir Godfrey and Lady Russell Vick, Mr. and Mrs. W. W. Boulton, Sir Leonard and Lady Holmes, Mr. and Mrs. T. G. Lund, the Hon. Sir Albert and Lady Napier, Sir Thomas Barnes, Sir Eric and Lady Beckett, Sir Bernard and Lady Blatch, Sir Edward Bridges, Sir Cecil Carr, Sir Alan Ellis, Sir David Maxwell Fyfe, Sir Clement and Lady Hallam, Sir Nazeby and Lady Harrington, Sir Thomas and Lady Harrison, Sir Geoffrey and Lady Stuart King, Sir Theobald and Lady Mathew, Sir Marshall and Lady Millar Craig, Sir Walter and the Hon. Lady Monckton, Sir Kenneth Roberts-Wray, Mr. and Mrs. Harold Christie, and Mr. Albert Day.

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